



***Bintai Kindenko Pte Ltd v Samsung C&T Corp* [2018] SGCA 39 – Principles Governing Adjudication of Claims under the SOPA**

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I. Introduction

In *Bintai Kindenko Pte Ltd v Samsung C&T Corp* [2018] SGCA 39 ("***Bintai v Samsung***"), the Court of Appeal clarified the principles governing the adjudication of claims under the Building and Construction Industry Security of Payment Act (Cap 30B) (the "**SOPA**").

Since its inception in 2006, adjudication under the SOPA has gained a reputation for "rough justice". The scheme emphasised the speedy resolution of payment claims, but occasionally at the expense of a thorough investigation of the parties' disputes. As the Court of Appeal in *Bintai v Samsung* recognised, this state of affairs is tolerated (i.e. curial intervention in the adjudication process is limited) because of the idea that adjudication determinations only have "temporal finality". In short, such determinations are binding on parties until finally resolved, say at the end of the construction project when litigation or arbitration is commenced. So even if some mistakes are made at the adjudication stage, there is another chance for wrongs to be set right – in theory if not in practice.

What is significant about *Bintai v Samsung* is that the Court of Appeal has upheld the setting aside of an adjudication award for a breach of the rules of natural justice, viz. by failing to consider an issue that the parties had properly placed before the adjudicator. This line of argument is a familiar one, at least in the context of *commercial* arbitral awards (both domestic or international), since it was first accepted in the High Court decision in *Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80 ("**Front Row**"), which was later affirmed by the

Court of Appeal in *AKN and another v ALC and others* [2015] 3 SLR 488.

The applicability of this rule of natural justice had not, prior to *Bintai v Samsung*, been successfully invoked in a challenge to an adjudication determination, and it very much remained an open question whether such a rule had any place in the "rough justice" of SOPA adjudications. That question has now been answered.

In *Bintai v Samsung*, the mechanical and electrical engineering subcontractor, Bintai, brought an adjudication claim to determine the quantum of payment owed to it by Samsung, the main contractor. The relevant issues before the adjudicator were: (a) whether Bintai was entitled to the first half of the retention monies; (b) whether Bintai was liable to pay back charges to Samsung; and (c) the quantum payable by Samsung for variation works performed by Bintai. The adjudicator found that Bintai was entitled to the first half of the retention monies but unfortunately failed to consider or address either of the remaining two issues regarding the back charges and the variation works, and accordingly did not make any findings in that connection.

II. The High Court's Decision

Samsung then applied to set aside the adjudication determination on the ground that the adjudicator's failure to consider the two issues regarding back charges and variation works amounted to a breach of a rule of natural justice. The High Court granted Samsung's application. Bintai appealed.

III. The Court of Appeal's Decision

The High Court decision was affirmed by the Court of Appeal, which clarified that the principles in the *Front Row* line of cases to also

be applicable in the context of SOPA adjudications. Further, the Court of Appeal held that an adjudicator will be found to have acted in breach of natural justice for having failed to consider an issue in the dispute before him only if:

- a. the issue was essential to the resolution of the dispute; and
- b. a clear and virtually inescapable inference may be drawn that the adjudicator did not apply his mind at all to the said issue.

The above situation must be distinguished from two other scenarios: (a) where the adjudicator fails to consider a non-essential issue; and (b) where an adjudicator had considered the issue but had wrongly rejected the aggrieved party's submissions. In these scenarios, the error on the adjudicator's part does not amount to a breach of a rule of natural justice. This distinction reflects the Court's view that while adjudicators "*do not have the luxury of time to craft immaculately reasoned adjudication determinations*", that is no excuse for an adjudicator to fail to consider a legitimate argument raised by the parties.

On the facts, the Court of Appeal agreed with Samsung that there had been a failure by the adjudicator to consider the issues regarding the back charges and variation works, which were clearly essential as they would affect Bintai's entitlement to payment.

IV. Conclusion

This decision is to be lauded. It sends a clear signal that even if the Courts generally take a

hands-off approach to adjudication determinations, adjudicators must still be careful to observe the rules of natural justice and must apply their minds to all essential issues raised by the parties. As a practical matter, members of the industry must take care in putting up claims (or cross claims) for adjudication so that an adjudicator's attention is specifically drawn to all the essential issues to be determined.

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